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09/481,120	01/11/2000	MICHAEL DELK	1780/OF908	5209

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NEW YORK, NY 10022

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EXAMINER

SCHELL, LAURA C

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3767

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/481,120
Filing Date: January 11, 2000
Appellant(s): DELK ET AL.

MAILED

JUL 06 2004

Group 3700

Michael J. Sweedler
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/4/2004 appealing from the Office action
mailed 10/6/2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,436,072	KULLAS et al.	8-2002
4,201,406	DENNEHEY et al.	5-1980

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kullas (US Patent No. 6,436,072) in view of Dennehey et al. (US Patent No. 4,201,406).

Kullas discloses a pumping unit (1) having an inlet (end connected to 10) and an outlet (end connected to 12), a handpiece (16) and tubing (12) connecting the outlet of said pumping unit to said handpiece, said pumping unit including a support (18) for the pumping unit, a flexible tube (10) connecting at one end to said inlet, and a spike (14) connected to the other end of said flexible tube (note: The spike of Kullas is fully capable of being adapted to penetrate a fitting in said irrigation bag. Further, applicant has not claimed a fitting.) Kullas does not disclose a lubricant (silicone) coating on the

spike. Dennehey discloses a lubricating material that may be applied to the spike (col. 3, lines 5-20). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the spike of Kullas with a lubricant as taught by Dennehey so that the spike can be easily inserted into the irrigation bag (col. 3, lines 5-20). As to claims 15-16, (Fig. 1).

As to claim 14, it is the examiner's position that a minimal portion of the spike can be coated with a lubricant thus enabling the spike to remain in frictional engagement with the fitting to support the weight of the spike and the flexible tubing. However, if one of ordinary skill in the art would disagree, then it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the spike of Kullas with the spike (22) as taught by Dennehey for enabling the tube to be coupled to the irrigation bag with a snug pressure fit thus supporting the weight of the spike and flexible tubing (col. 3, lines 25-29 and Fig. 1).

(10) Response to Argument

In response to Appellants' first argument that Dennehey is not concerned with irrigation, it is the Examiner's position that Dennehey does not need to be related to surgical irrigation, as Kullas meets all the structural limitations of the apparatus claims. Dennehey is brought in as a secondary reference only to show that it is obvious to one of ordinary skill in the art to coat a spike with a lubricant. Additionally, Dennehey discloses that the invention is applicable not only to peritoneal dialysis but also to other various types of medical procedures (col. 2, lines 45-50). Therefore since Kullas discloses all the structural limitations of the claims except of a lubricated spike, and

Dennehey discloses that it is obvious to lubricate a spike for ease of insertion (col. 3, lines 15-20), it is submitted that claims 12-16 are rendered obvious by Kullas in view of Dennehey.

In response to Appellants' second argument that Dennehey is concerned with preventing contamination of the spike, it is the Examiner's position that since claims 12-16 are apparatus claims, Kullas in view of Dennehey renders claims 12-16 obvious as Kullas discloses all the structure limitations of the device. Kullas does not disclose that the spike is lubricated, however, Dennehey discloses a lubricated spike and therefore discloses that it is obvious to one of ordinary skill in the art to coat Kullas' spike with lubrication to provide for easier insertion.

In response to Appellants' arguments that the combination of Kullas in view of Dennehey is not obvious, it is the Examiner's position that Dennehey discloses that it is well known within the art to use lubricants on spikes as disclosed by Dennehey in col. 3, lines 17-20. Therefore, since Kullas discloses all the structural limitations of claims 12-16 except for the spike being lubricated, it would have been obvious to coat the spike with a lubricant, as taught and supported by Dennehey, in order to provide a spike that can be easily inserted.

(11) Related Proceeding(s) Appendix

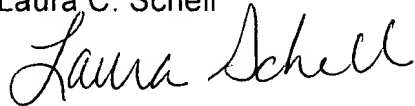
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Laura C. Schell



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KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER



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